

1 **UNITED STATES DISTRICT COURT**
2 **DISTRICT OF NEVADA**

3 MICHAEL LEON WILLIAMS,

Case No.: 3:17-cv-00355-MMD-WGC

4 Plaintiff

Order

5 v.

Re: ECF No. 67

6 DR. MARKS, et. al.

7 Defendants
8

9 Before the court is Defendants' motion for leave to file Defendants' motion for summary
10 judgment and Exhibits A, B, D, E and H under seal. (ECF No. 67.)

11 In this motion, Defendants seek to file under seal their motion for summary judgment as
12 well as certain exhibits containing Plaintiff's medical records.

13 "Historically, courts have recognized a general right to inspect and copy public records
14 and documents, including judicial records and documents." *Kamakana v. City and County of*
15 *Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (internal quotation marks and citation omitted).
16 "'Throughout our history, the open courtroom has been a fundamental feature of the American
17 judicial system. Basic principles have emerged to guide judicial discretion respecting public
18 access to judicial proceedings. These principles apply as well to the determination of whether to
19 permit access to information contained in court documents because court records often provide
20 important, sometimes the only, bases or explanations for a court's decision.'" *Oliner v.*
21 *Kontrabecki*, 745 F.3d 1024, 1025 (9th Cir. 2014) (quoting *Brown & Williamson Tobacco Corp.*
22 *v. F.T.C.*, 710 F.2d 1165, 1177 (6th Cir. 1983)).
23

1 Documents that have been traditionally kept secret, including grand jury transcripts and
2 warrant materials in a pre-indictment investigation, come within an exception to the general right
3 of public access. *See Kamakana*, 447 F.3d at 1178. Otherwise, "a strong presumption in favor of
4 access is the starting point." *Id.* (internal quotation marks and citation omitted). "The
5 presumption of access is 'based on the need for federal courts, although independent—indeed,
6 particularly because they are independent—to have a measure of accountability and for the
7 public to have confidence in the administration of justice.'" *Center for Auto Safety v. Chrysler*
8 *Group, LLC*, 809 F.3d 1092, 1096 (9th Cir. 2016), *cert. denied*, 137 S.Ct. 38 (Oct. 3, 2016)
9 (quoting *United States v. Amodeo (Amodeo II)*, 71 F.3d 1044, 1048 (2nd Cir. 1995); *Valley*
10 *Broad Co. v. U.S. Dist. Ct., D. Nev.*, 798 F.2d 1289, 1294 (9th Cir. 1986)).

11 There are two possible standards a party must address when it seeks to file a document
12 under seal: the compelling reasons standard or the good cause standard. *Center for Auto Safety*,
13 809 F.3d at 1096-97. Under the compelling reasons standard, "a court may seal records only
14 when it finds 'a compelling reason and articulate[s] the factual basis for its ruling, without
15 relying on hypothesis or conjecture.'" *Id.* (quoting *Kamakana*, 447 F.3d at 1179). The court must
16 "'conscientiously balance[] the competing interests of the public and the party who seeks to keep
17 certain judicial records secret.'" *Id.* "What constitutes a 'compelling reason' is 'best left to the
18 sound discretion of the trial court.'" *Id.* (quoting *Nixon v. Warner Comm., Inc.*, 435 U.S. 589, 599
19 (1978)). "Examples include when a court record might be used to 'gratify private spite or
20 promote public scandal,' to circulate 'libelous' statements, or 'as sources of business information
21 that might harm a litigant's competitive standing.'" *Id.*

22 The good cause standard, on the other hand, is the exception to public access that has
23 been typically applied to "sealed materials attached to a discovery motion unrelated to the merits

1 of the case." *Id.* (citation omitted). "The 'good cause language comes from Rule 26(c)(1), which
2 governs the issuance of protective orders in the discovery process: The court may, for good
3 cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or
4 undue burden or expense.'" *Id.*

5 The Ninth Circuit has clarified that the key in determining which standard to apply is
6 whether the documents proposed for sealing accompany a motion that is "more than tangentially
7 related to the merits of a case." *Center for Auto Safety*, 809 F.3d at 1101. If that is the case, the
8 compelling reasons standard is applied. If not, the good cause standard is applied.

9 Here, Defendants seek to file their motion for summary judgment and certain exhibits
10 containing Plaintiff's medical records under seal. A motion for summary judgment is
11 unquestionably "more than tangentially related to the merits of a case." Therefore, the
12 compelling reasons standard applies.

13 Typically, the Attorney General's Office seeks to file *medical records* themselves under
14 seal, but not the accompanying motion for summary judgment.

15 This court, and others within the Ninth Circuit, have recognized that the need to protect
16 medical privacy qualifies as a "compelling reason" for sealing records. *See, e.g., San Ramon*
17 *Regional Med. Ctr., Inc. v. Principal Life Ins. Co.*, 2011 WL89931, at *n.1 (N.D. Cal. Jan. 10,
18 2011); *Abbey v. Hawaii Employers Mut. Ins. Co.*, 2010 WL4715793, at * 1-2 (D. HI. Nov. 15,
19 2010); *G. v. Hawaii*, 2010 WL 267483, at *1-2 (D.HI. June 25, 2010); *Wilkins v. Ahern*, 2010
20 WL3755654 (N.D. Cal. Sept. 24, 2010); *Lombardi v. TriWest Healthcare Alliance Corp.*, 2009
21 WL 1212170, at * 1 (D.Ariz. May 4, 2009). This is because a person's medical records contain
22 sensitive and private information about their health. While a plaintiff puts certain aspects of his
23 medical condition at issue when he files an action alleging deliberate indifference to a serious

1 medical need under the Eighth Amendment, that does not mean that the entirety of his medical
2 records filed in connection with a motion (which frequently contain records that pertain to
3 unrelated medical information) need be unnecessarily broadcast to the public. In other words, the
4 plaintiff's interest in keeping his sensitive health information confidential outweighs the public's
5 need for direct access to the medical records.

6 Here, the court has reviewed the motion for summary judgment, and finds that
7 compelling reasons do not exist for sealing the motion itself. As was stated above, a plaintiff puts
8 certain aspects of his medical condition at issue when he files an action alleging deliberate
9 indifference which requires public disclosure of some aspects of his health information. These
10 basic details essential to resolving the case are part of the public record and the court does not
11 find that compelling reasons have been asserted for sealing the motion for summary judgment
12 itself. Instead, the court finds there are only compelling reasons to seal the medical records
13 themselves, which contain more information than that which is essential to be disclosed in the
14 briefing on this dispositive motion.

15 Therefore, Defendants' motion (ECF No. 67) is **GRANTED IN PART AND DENIED**
16 **IN PART**. It is **DENIED** as to the motion for summary judgment (ECF No. 68), and the Clerk
17 shall **UNSEAL** ECF No. 68. Defendants shall ensure that Plaintiff has been served with a copy
18 of the motion for summary judgment. Plaintiff has **21 days** from the date of this Order to file his
19 response to the motion for summary judgment. Defendants have **14 days** from the date they are
20 served with the response to file their reply brief. The motion for leave to file under seal is
21 **GRANTED** insofar as Defendants seek leave to have the medical records in the exhibits filed
22 under seal: ECF Nos. 68-1, 68-2, 68-3, and 68-4. The referenced exhibits contain Plaintiff's
23 sensitive health information, medical history and treatment records. Balancing the need for the

1 public's access to information regarding Plaintiff's medical history, treatment, and condition
2 against the need to maintain the confidentiality of Plaintiff's medical records weighs in favor of
3 sealing these exhibits.

4 **IT IS SO ORDERED.**

5 Dated: October 11, 2019

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7 William G. Cobb
8 United States Magistrate Judge
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